

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR AN INVESTIGATION INTO THE)	CASE NO.
UTILITY ASSESSMENTS PAID BY KENTUCKY)	2007-00409
RSA #3 CELLULAR GENERAL PARTNERSHIP)	

O R D E R

Kentucky RSA #3 Cellular General Partnership ("RSA #3") has petitioned the Commission to establish an administrative case to investigate the regulation of wireless telecommunications service providers. RSA #3 also framed its petition as a complaint, alleging that there is an unreasonable or unfair difference in the manner in which the Commission regulates wireless service providers in Kentucky. RSA #3 has asked the Commission to investigate whether prepaid wireless service providers and other resellers of wireless telecommunications service should be considered utilities under KRS Chapter 278 and whether these entities should be paying the annual assessment, pursuant to KRS 278.130. RSA #3 provides wireless service in 14 counties within the western portion of the state.¹ Its principal office is located in Elizabethtown, Kentucky.

The two entities for which RSA #3 alleges the existence of an unreasonable regulatory difference are TracFone Wireless, Inc. ("TracFone") and Virgin Mobile USA, LLC ("Virgin Mobile"). According to RSA #3's petition, TracFone and Virgin Mobile both

¹ RSA #3, along with Kentucky RSA #4 Cellular General Partnership and Cumberland Cellular, together do business under the name of Bluegrass Cellular. Within its 2006 annual report, as filed with the Commission, RSA #3 reported its total number of customers as approximately 32,621.

offer prepaid wireless service in Kentucky, though they are not registered utilities. TracFone and Virgin Mobile do not maintain wireless facilities in the state, nor do they maintain independent retail businesses in the state. In Kentucky, their products and services are sold, exclusively, through third-party retailers such as Kroger, Wal-Mart, or small convenience stores. RSA #3 alleges that because these entities are not registered utilities, they do not pay the utility assessment and, therefore, enjoy an unfair competitive advantage.

Having reviewed the application, the Commission finds that the administrative case investigation requested by RSA #3 should be denied. The Commission finds that such an investigation is not warranted at this time. The Commission has little or no information as to the approximate number of these particular companies operating in Kentucky. The underlying assumption is that TracFone and Virgin Mobile are only two of several dozens of companies that sell packaged prepaid wireless service through third-party retail stores but are not facilities-based competitors and are not registered as utilities in Kentucky. Despite this assumption, RSA #3 has failed to provide data on other potential companies similarly situated to TracFone and Virgin Mobile. To follow RSA #3's request would require this Commission to delve into uncharted waters whose depth is completely unknown. Such an investigation would require serious structural and statistical information, neither of which has been provided by RSA #3 in its petition for the establishment of an administrative case. At this time, the Commission will decline RSA #3's request to go forward with a large-scale exploration that singles out only two entities on the market based on the assumption that any findings rendered

at the conclusion of that investigation should be applied to an entire undefined range of businesses.

Despite declining to proceed with a large-scale administrative case, the Commission will allow this matter to remain open solely for the purpose of investigating the complaint as to the annual assessment payments made by RSA #3. The Commission will review the types of intra-state businesses and services rendered by RSA #3 and whether the assessment amount it currently pays is accurate. Upon concluding the investigation into RSA #3's assessments, the Commission will then determine if it is reasonable, necessary, and in the public interest to go forward with a larger investigation of the registered telecommunications utilities providing prepaid wireless services in Kentucky and if the Commission should, pursuant to its statutory authority, modify their assessment requirements as well.

IT IS THEREFORE ORDERED that:

1. The Commission denies RSA #3's petition to the extent that it requests a formal investigation into the regulation and assessments of TracFone, Virgin Mobile, or non-registered resellers of prepaid wireless service.
2. The Commission shall allow this matter to remain open for the purpose of investigating the annual utility assessment paid by RSA #3.
3. An informal conference shall be held in this matter on February 11, 2008 at 10:00 a.m., Eastern Standard Time, at the Commission's Offices at 211 Sower Boulevard, Frankfort, Kentucky.
4. RSA #3 shall file with the Commission the original and 5 copies of the information listed in Appendix A.

Done at Frankfort, Kentucky, this 26th day of December, 2007.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00409 DATED December 26, 2007

RSA #3, pursuant to 807 KAR 5:001, is to file with the Commission the original and 5 copies of the following information, with a copy to all parties of record. The information requested herein is due within 30 days of the date of this Order. Responses to requests for information shall be appropriately bound, tabbed and indexed. Each response shall include the name of the witness responsible for responding to the questions related to the information provided.

Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

RSA #3 shall make timely amendment to any prior responses if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect. For any requests to which RSA #3 fails or refuses to furnish all or part of the requested information, RSA #3 shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the

requested format, reference may be made to the specific location of that information in responding to this request. When applicable, the requested information shall be separately provided for total company operations and jurisdictional operations.

1. Describe the corporate relationship between Bluegrass Cellular and RSA #3. Please identify all other telephone utilities in Kentucky having a corporate relationship to Bluegrass Cellular similar to that of RSA #3.

2. Identify all of RSA #3's revenues included and excluded from the Gross Operating Report, as filed with the Commission, for the years 2004, 2005, and 2006.

3. Explain the methods used by RSA #3 to determine revenue from interstate business versus revenue from intra-state business.

4. Identify the carrier(s) licensed with the Federal Communications Commission that supply the underlying wireless services for RSA #3's prepaid services.

5. Discuss and provide documentation of RSA #3's wholesale arrangements with the underlying carrier(s), as identified above.

6. Identify all retail locations within Kentucky wherein RSA #3 provides wireless devices, prepaid minutes-for-use and other wireless products for sale. Provide the name of each business, the street address and the city and county location.

7. State if RSA #3 collects biographical information from retail customers purchasing prepaid wireless devices or prepaid wireless services.

8. State if RSA #3 creates customer accounts for customers purchasing prepaid wireless devices or prepaid wireless services.

9. Describe, in detail, the terms of use for RSA #3's prepaid wireless services purchased by retail customers. Provide, in detail, any limitations on service and the terms for expiration of service.